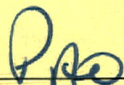


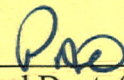
March 1, 2000

IN RE: DOCKET NO. 1999-469-C – BELLSOUTH – GUIDELINES FOR ALTER.
REG.

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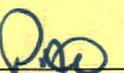
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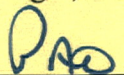
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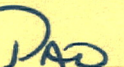
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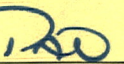
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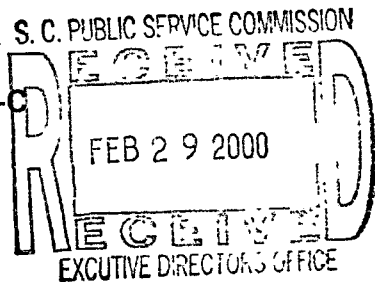
MCIWORLDCOM, INC
DIRECT TESTIMONY OF GREG DARNEILLE
AND ATTACHMENTS
BEFORE THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 1999-469-C
FEBRUARY 29, 2000

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MCIWORLDCOM, INC
DIRECT TESTIMONY OF GREG DARNELL
BEFORE THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA S. C. PUBLIC SERVICE COMMISSION
DOCKET NO. 1999-469-C
FEBRUARY 29, 2000



- Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.
- A. My name is Greg Darnell, and my business address is 6 Concourse Parkway, Suite 3200, Atlanta, Georgia, 30328.
- Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?
- A. I am employed by MCI WorldCom, Inc as Regional Senior Manager -- Public Policy.
- Q. HAVE YOU PREVIOUSLY TESTIFIED?
- A. Yes, I have testified in proceedings before regulatory commissions in Alabama, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee and on numerous occasions have filed comments before the FCC. Provided as Attachment 2 to this testimony is a summary of my academic and professional qualifications.
- Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

1 A. The purpose of this testimony is to respond to the Complaint Process
2 Guidelines proposed by BellSouth on November 11, 1999 in this
3 docket.

4
5 Q. WHAT IS YOUR GENERAL IMPRESSION OF BELLSOUTH'S
6 PROPOSED COMPLAINT PROCESS GUIDELINES?

7 A. They are a self-serving attempt to handcuff the authority of the South
8 Carolina Public Service Commission ("Commission") to regulate the
9 future actions of BellSouth.

10

11 Q. WHAT IS WRONG WITH BELLSOUTH'S PROPOSED COMPLAINT
12 PROCESS GUIDELINES?

13 A. In Article II of BellSouth's Proposed Complaint Process Guidelines,
14 BellSouth attempts to narrowly define certain terms, misinterprets other
15 terms and invents new terms in S.C. Code 58-9-576 ("Alternative
16 Regulatory Statute" or "The Statute" or "Section 576"). In each case,
17 BellSouth's proposed Complaint Process Guidelines would unnecessarily
18 limit the future regulatory authority of the Commission. In Article III,
19 BellSouth attempts to reword Section 58-9-576(B)(4). This attempted
20 rewording of Section 58-9-576(B)(4) also unnecessarily limits the
21 Commission's future regulatory authority. In Article IV, BellSouth
22 attempts to establish a complaint process that is unduly burdensome on
23 the complainant and virtually guarantees that BellSouth can not lose.

24

1 Q. WHAT IS YOUR RECOMMENDATION FOR THIS COMMISSION?

2 A. I recommend that this Commission reject BellSouth's proposed
3 Complaint process guidelines and adopt the Complaint process
4 guidelines that are attached to my testimony at attachment 1. The
5 attached BellSouth Complaint Process Guidelines are modeled after the
6 Complaint guidelines this Commission approved for United Telephone
7 Company of the Carolinas in Docket No. 98-294-C.

8

9 Q: IN DEVELOPING GUIDELINES, WHAT GENERAL PRINCIPLES SHOULD
10 GUIDE THE COMMISSION?

11 A: Although I am not an attorney, in my opinion the Commission should
12 strive to give effect to the legislative purpose of section 576. To do
13 so, the Commission must consider the purpose of the statute and its
14 impact on the body of law as a whole. The law as it existed before
15 the statute was passed – which has not been repealed by the General
16 Assembly - must be considered, and the issue sought to be addressed
17 by the statute must be placed within the context of the whole body of
18 relevant law. In short, the Commission should construe section 576
19 in combination with other relevant statutes, resolving any conflicts by
20 considering the principle under the State Constitution that utilities
21 must be subjected to "appropriate regulation".

22

23 Q: WHAT IS THE CONSTITUTIONAL PRINCIPLE INVOLVED IN THIS

1 CASE?

2 A: Article IX, Section 1 of the South Carolina Constitution requires that
3 "(t)he General Assembly shall provide for appropriate regulation of
4 common carriers, publicly owned utilities, and privately owned utilities
5 serving the public as and to the extent required by the public interest."

6

7 Q: WHAT IS THE EFFECT OF THIS PROVISION ON THIS PROCEEDING?

8 A: It means that there is a constitutional requirement that the General
9 Assembly, and the agency of the State – the Commission – that
10 administers the legislature's laws, must ensure that utilities that
11 possess monopoly power do not regulate themselves. Further, the
12 Constitution dictates that the Commission should consider the context
13 in which regulation is to be adjudged as "appropriate". Until the mid-
14 1990s BellSouth and its predecessors in interest had been de jure
15 monopolies in South Carolina for approximately one hundred years.
16 BellSouth is now a de facto monopoly local exchange carrier. There is
17 functionally little if any competition in the local exchange market in
18 South Carolina. Yet competition in the local exchange market is
19 clearly the public interest and priority established by federal as well as
20 State law. Hence the guidelines to be adopted must adequately
21 protect the development of competition from a monopolist which
22 presently has little if any incentive to open its market.

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Q: WHAT IS THE STATUTORY LAW THAT PREDATES SECTION 576?

A: S.C. Code Ann. Section 58-9-840, which predates section 576 and was not repealed by the General Assembly when it enacted the latter statute, states that "(n)othing contained in Articles 1 through 13 of this chapter shall be construed to divest the Commission of any power now possessed by it to regulate telephone utilities and the duties and powers hereby devolved upon the Commission are in addition those now imposed by law" (Emphasis added).

Under Chapter 9 of Section 58 of the South Carolina Code the Commission retains general authority to examine the affairs of all telephone companies under its supervision. For example, S.C. Code Ann. Section 58-9-830 states: " The enumeration of the powers of the Commission as herein set forth shall not be construed to exclude the exercise of any power which the Commission would otherwise have under the provisions of law" (Emphasis added). S.C. Code Ann. section 58-3-140 (A) states that:

The Public Service Commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.

1 Section 58-9-210 mandates that "(e)very rate made, demanded
2 or received by any telephone utility . . . shall be just and reasonable."

3
4
5 Q: WHAT THEN IS THE RELEVANCE OF THIS STATUTORY LAW AND
6 WHAT IS THE CONTEXT IN WHICH SECTION 576 IS TO BE
7 CONSTRUED WITH PRE-EXISTING STATUTES AND DECISIONS OF
8 THIS COMMISSION?

9 A: The General Assembly did not repeal the pre-existing statutes when
10 section 576 was enacted. To construe section 576, one has to look
11 to the facts of this situation and the legislative intent, and attempt to
12 construe the relevant statutes consistently with the South Carolina
13 Constitution. The intent of the General Assembly should be clear
14 enough when S.C. Code Ann. section 58-9-576 is read in combination
15 with other relevant statutes. Moreover, the intent of the Constitution
16 and the General Assembly – for "appropriate regulation" - will prevail
17 over the literal terms of a particular statute or sections of a single
18 statute.

19 Thus, the legislative intent appears to have been that the
20 General Assembly established alternative regulation as a quid pro quo,
21 presupposing that rates would have been long subject to some review,
22 or that a lawful alternative regulation plan had been in effect, before

1 the election of alternative regulation is made. In exchange for
 2 conferring the right to elect alternative regulation under S.C. Code
 3 Ann. section 58-9-576, the General Assembly provided some
 4 consumer protection in the guise of rate caps for certain services and
 5 "inflation based" adjustments. The premise of the legislation, as the
 6 General Assembly must have intended, was that this price cap or
 7 "freeze" would protect consumers with respect to basic rates, while
 8 LECs would enjoy the ability to set other rates subject to guidelines to
 9 be adopted by the Commission.

10 Here, however, BellSouth's alternative regulation plan under
 11 S.C. Code Ann. section 575 ("section 575") was found to be
 12 unlawful by the South Carolina Supreme Court, so there had been no
 13 review of BellSouth's rates for about four (4) years while regulation
 14 under section 575 was assumed to be in effect. Nonetheless, at the
 15 same time, following the Supreme Court's decision BellSouth filed
 16 notice of its intent to elect the provisions of section 576, claiming
 17 that its existing rates, terms and conditions of service could not be
 18 challenged. The Commission dismissed the petitions to intervene filed
 19 last fall by MCI WorldCom and others, which asked for an earnings
 20 review before section 576 alternative regulation would go into effect.
 21 The Commission characterized those petitions as not "ripe," since
 22 guidelines had not been proposed by BellSouth. The Commission also

1 ordered that the overearnings petition filed in Docket No. 1999-178- C
2 by the Consumer Advocate would be dismissed.

3 While MCI WorldCom disagrees with the Commission's
4 decisions, and reserves its rights regarding further actions by the
5 Commission as well as on appeal, it appears from these decisions that
6 the existing rates, terms and conditions of BellSouth, as of the
7 effective date of alternative regulation under section 576, indeed are
8 to be considered just and reasonable. Since the General Assembly,
9 however, following the South Carolina's mandate of "appropriate
10 regulation," could never have intended for the Commission to
11 relinquish all supervision, once authorized and expected to be
12 exercised, over existing rates, terms and conditions for which
13 alternative regulation now has been elected, the Commission
14 necessarily retains some authority as to these matters.

15 In this context, the Legislature could not have intended that
16 rates, terms and conditions as of August 14, 1999 would forever be
17 considered just and reasonable. However, under BellSouth's
18 proposed complaint process guidelines, its rates, terms and conditions
19 may never be challenged by the Commission or other parties under
20 just and reasonable standards, no matter what the changed
21 circumstances may be.

22

1 Q. HOW DO THE COMPLAINT PROCESS GUIDELINES YOU PROPOSE
2 DIFFER FROM THE COMPLAINT PROCESS GUIDELINES PROPOSED BY
3 BELL SOUTH?

4 A. The Complaint process guidelines I propose for BellSouth allows this
5 Commission the flexibility to exercise its judgment in deciding whether
6 or not a complaint has merit. The Complaint process guidelines
7 proposed by BellSouth removes much of the Commission's authority to
8 exercise its judgment, by narrowly defining terms under which
9 complaints can be filed and under which complaints can be heard.

10

11 Q. IS THERE ANY REASON THAT THE COMPLAINT PROCESS
12 GUIDELINES FOR BELL SOUTH SHOULD BE SIGNIFICANTLY MORE
13 CONFINING THAN THE COMPLAINT PROCESS GUIDELINES THIS
14 COMMISSION HAS APPROVED FOR UNITED?

15 A. No, if anything the commission should have more flexibility in dealing
16 with complaints filed against BellSouth. Historically, regulatory
17 commissions have regulated large Incumbent Local Exchange Carriers
18 (ILECs), such as BellSouth, more stringently than smaller, more rural,
19 ILECs such as United. This has been done primarily because the larger
20 ILECs, such as BellSouth, have more resources to both fight complaints
21 and engage in anti-competitive conduct. As such, applying the United
22 guidelines to BellSouth is less "regulatory" than history would have it.

23

24 Q. WHAT TERMS CONTAINED IN S.C. CODE ANN. 58-9-576(B) DOES

1 BELLSOUTH ATTEMPT TO NARROWLY DEFINE IN ITS PROPOSED
2 COMPLAINT PROCESS GUIDELINES IN ORDER TO LIMIT THE FUTURE
3 REGULATORY AUTHORITY OF THE COMMISSION?

4 A. The Statute states that "rates are subject to a complaint process for
5 abuse of market position in accordance with guidelines to be adopted
6 by the commission"(58-9-576(B)(5)). BellSouth in its proposed
7 guidelines attempts to narrowly define the phrase "abuse of market
8 position" to mean, "using market power to harm competition in a
9 relevant market" (BellSouth Proposed Guidelines, Article II, 1.). Market
10 Position and Market Power are two very different terms and mean very
11 different things.

12
13 Q. HOW IS THE DEFINITION OF MARKET POSITION DIFFERENT THAN
14 MARKET POWER?

15 A. Market Power can be a determinant of Market Position. As such,
16 Market Power can be viewed as a subset or variable of Market Position.
17 However, the term "Market Position" can not be viewed as a subset or
18 variable of Market Power. The term "Market Position" has a broader
19 context than the term "Market Power". "Market Position" simply
20 means a company's position in the market. For example, to determine
21 a company's Market Position you would ask the following sorts of
22 questions: Is it the only company selling service in a market?
23 Conversely, is the company one of many similarly situated companies
24 selling substitutable goods or services? Does the company have market

1 power in that it has the ability to raise rates without improving the
 2 product being sold, and increase profits? Or conversely, does it lack
 3 market power in that if it increased rates without improving the product
 4 being sold would it will lose customer demand and lose profit? Is it the
 5 dominant firm in that it leads the market and drives changes in services,
 6 technology and prices? Does the Company control an essential input in
 7 the market that enables it to control the type of services provided in the
 8 market or a portion of the overall price of services in the market?

9
 10 Q. HOW ELSE DOES BELLSOUTH PROPOSE TO RE-WRITE THE LAW IN
 11 ITS PROPOSED COMPLAINT PROCESS GUIDELINES IN AN ATTEMPT
 12 TO LIMIT THE COMMISSION'S REGULATORY AUTHORITY?

13 A. BellSouth proposes that the law, as it would like to re-write it, should
 14 limit the definition of Market Position: first by superimposing its Market
 15 Power term, and then limiting its Market Power term to mean "doing
 16 something that would not make rational economic sense for a firm
 17 without market power" (P. 4). BellSouth provides "predatory pricing"
 18 and "price squeeze" as examples of a firm doing something that would
 19 not make rational economic sense (P.4). BellSouth even proposes that
 20 the terms "predatory pricing" and "price squeeze" should be limited to
 21 as they are interpreted under federal antitrust law (BellSouth proposal,
 22 p.5). In doing so, BellSouth wishes to give the Commission the sleeves
 23 out of its vest. Antitrust law is a matter that is already adjudicated by
 24 the Courts. This Commission need not act as a redundant antitrust

1 court and its regulatory authority should not be limited to antitrust law.

2

3 Q. DOES THE COMMISSION NEED TO DEFINE THE PHRASE IN THE LAW
4 'ABUSE OF MARKET POSITION'?

5 A. No. The complaint process guidelines that this Commission adopts
6 need not attempt to define the law. The law says what it says. The
7 Commission's guidelines only need to establish a process to administer
8 the law. As such, BellSouth's proposed definition of "abuse of market
9 position" contained in Article II Definitions (1) of the proposed
10 compliant process guidelines should be stricken.

11

12 Q. DO THE COMPLAINT PROCESS GUIDELINES APPROVED BY THIS
13 COMMISSION FOR UNITED TELEPHONE AND TELEGRAPH DEFINE
14 THE TERM "ABUSE OF MARKET POSITION"?

15 A. No. United's Complaint Process Guidelines do not attempt to define (or
16 in the case of what BellSouth is proposing, redefine) the law. The
17 Complaint Process Guidelines that the Commission approved for United
18 simply establish a process to administer the law.

19

20 Q. HOW COULD BELL SOUTH'S DEFINITION OF ABUSE OF MARKET
21 POSITION HANDCUFF THE COMMISSION'S FUTURE REGULATORY
22 AUTHORITY?

23 A. A complaint alleging "Abuse of Market Position" could be as simple as a
24 customer contending that BellSouth is charging its customers more than

1 would be permitted by a competitive marketplace and as such BellSouth
 2 must be abusing its Market Position. Under the term used in the
 3 statute, "abuse of market position", the Commission has the authority
 4 to determine if BellSouth is charging more than a competitive market
 5 would permit and, if BellSouth is doing so, to rectify the situation by
 6 requiring BellSouth to reduce certain rates. The Commission has this
 7 authority because only if BellSouth were abusing its market position
 8 could it sustain supranormal profits (i.e. monopoly profit). Under the
 9 more restrictive, "abuse of monopoly power in a particular market"
 10 proposed by BellSouth, the complaint would have to be able to define
 11 which market BellSouth is abusing. The existence of BellSouth
 12 supranormal profits over an extended period of time is strong evidence
 13 in and of itself of abuse of Market Power.¹

14
 15 Q. ARE THERE OTHER INSTANCES WHERE BELL SOUTH'S PROPOSED
 16 COMPLAINT PROCESS GUIDELINES ATTEMPT TO DEFINE TERMS IN
 17 A MANNER THAT LIMITS THE REGULATORY AUTHORITY OF THE
 18 COMMISSION?

19 A. Yes. The statute states that "The LEC's (sic) shall set rates for all other
 20 services on a basis that does not unreasonably discriminate between
 21 similarly situated customers" (58-9-576(B)(5)). BellSouth's proposed
 22 complaint process guidelines attempts to define reasonable

¹ David L. Kaserman and John W. Mayo, Government and Business: The Economics of Antitrust and Regulation, The Dryden Press: Orlando, FL (1995), at pages 98-99.

1 discrimination as "differentials in price or other terms and conditions of
 2 service where a rational basis for the differential exists." (Article II, (5)).
 3 BellSouth goes on to provide an example of what would be deemed
 4 reasonable discrimination under its definition. Under BellSouth's
 5 definition it would be reasonable for it to discriminate if the customer
 6 has "access to a competitive alternative." (Id., p.6)

7
 8 Q. DO THE TERMS "REASONABLE DISCRIMINATION" OR
 9 "UNREASONABLE DISCRIMINATION" EXIST IN THE STATUTE?

10 A. No, the terms that BellSouth attempts to define, "reasonable
 11 discrimination" and "unreasonable discrimination", do not exist in the
 12 statute. The term in the statute is "unreasonably discriminate".

13
 14 Q. IS THERE A DIFFERENCE BETWEEN THE TERM IN THE STATUTE,
 15 UNREASONABLY DISCRIMINATE" AND THE TERMS THAT
 16 BELL SOUTH CHOOSE TO DEFINE?

17 A. Yes. "Unreasonably discriminate" is in active tense. The terms
 18 BellSouth choose to define, reasonable and unreasonable discrimination,
 19 are in passive tense. The guidelines do not need to address what is or
 20 what is not reasonable discrimination as this term is not even in the
 21 statute. Further, even if BellSouth's terms were contained in the
 22 statute, the Commission need not attempt to define the law in
 23 BellSouth's complaint process guidelines.

24

1 Q. WHAT COULD BELL SOUTH DO IN THE MARKET UNDER ITS
2 PROPOSED DEFINITION OF REASONABLE DISCRIMINATION?

3 A. Under BellSouth's definition of reasonable discrimination it could play a
4 shell game with customer prices and the marketplace. What I mean by
5 playing a shell game is that BellSouth could lower the rate for a
6 customer if a competitor attempts to enter one market, and raise the
7 price of services in another market to offset its lost revenue in the first
8 market. Then, if the competitor pulls out of the first market, BellSouth
9 could raise its rates back to where they were before the threat of
10 competition. While these actions may be permitted under BellSouth's
11 definition contained in its proposed guidelines, these actions are not
12 permitted under the terms of the statute. BellSouth can not
13 "unreasonably discriminate between similarly situated customers".
14

15 Q. SHOULD THE EXISTENCE OF A COMPETITOR CHANGE THE
16 DEFINITION OF HOW A CUSTOMER IS SITUATED?

17 A. No. The existence of a competitor does not change how the customer
18 is situated. "Similarly situated" means the customers are of the same
19 type, i.e., business or residential.

20 If BellSouth's expanded definition of "Similarly Situated"
21 customers is accepted, BellSouth will be permitted to manage where it
22 wants local competition to occur and how fast it wants it to occur by
23 playing the shell game described above. That is, the monopolist,
24 BellSouth, will be able to regulate its market. This result cannot be

1 considered within the statutory intent of the law or within the
2 constitutional mandate of this Commission to ensure that utilities that
3 possess monopoly power do not regulate themselves.

4

5 Q. IS IT NECESSARY TO ATTEMPT TO PREDEFINE WHAT "SIMILARLY
6 SITUATED" MEANS?

7 A. No. The term "similarly situated" need not be defined at all. The
8 Commission should have to flexibility to use its judgment and decide
9 whether or not a complaint falls within the intent of the statute. The
10 Commission can make the decision whether or not customers are
11 similarly situated when a complaint is filed.

12

13 Q. BELLSOUTH PROPOSES IN ARTICLE III, GUIDELINES FOR SETTING
14 PRICES. ARE GUIDELINES FOR SETTING PRICES REQUIRED BY THE
15 STATUTE?

16 A. No.

17

18 Q. IN ITS PROPOSED PRICING GUIDELINES, DOES BELLSOUTH ATTEMPT
19 TO REWORD SECTION 58-9-576(B)(4)?

20 A. Yes. Section 58-576(B)(4) states that BellSouth's basic service rates
21 "may be adjusted" on an annual basis pursuant to an inflation-based
22 index. In Article III, paragraph 2, of its proposed guidelines, BellSouth
23 states that "Section 58-9-576(B)(4) allows BellSouth to increase its
24 Basic Service prices...". Section 58-9-576(B)(4) does not allow

1 BellSouth to increase its rates. Section 58-9-576(B)(4) permits the
 2 Commission (i.e. not BellSouth) to adjust (i.e. increase or decrease)
 3 BellSouth's rates pursuant to an inflation-based index. BellSouth's
 4 attempted modification of the statute would further limit the
 5 Commission's regulatory authority and should not be permitted.

6
 7 Q. BELL SOUTH PROPOSED PRICING GUIDELINES STATE THE
 8 TIMEFRAMES FOR TARIFF APPROVAL "SHALL NOT BE AFFECTED BY
 9 ALLEGATIONS OR COMPLAINTS FILED" (ARTICLE III, (6)). IS THIS
 10 PROVISION CONTAINED IN THE STATUTE?

11 A. No. This is yet another example of how BellSouth's proposed
 12 guidelines would limit the Commission's regulatory authority. Under the
 13 additional language proposed by BellSouth's, the Commission could not
 14 suspend and investigate a tariff no matter how egregious the proposed
 15 tariff appears.

16
 17 Q. HOW WOULD BELL SOUTH'S PROPOSED PROVISION THAT THE
 18 TIMEFRAMES FOR APPROVAL SHALL NOT BE AFFECTED BY
 19 ALLEGATIONS OR COMPLAINTS FILED, IMPACT THE MARKET?

20 A. Pending resolution of a complaint regarding a change in a tariff
 21 BellSouth would be free to continue to impose the changed terms, no
 22 matter what the circumstances. Neither the Commission nor any
 23 interested party would be able to halt a patently anti-competitive

1 practice pending a Commission ruling.

2 Once again, this proposed provision would place the monopoly,
 3 BellSouth, in the position of regulating its market. BellSouth's
 4 resources to fight a complaint far outweigh most, if not all, potential
 5 competitors in South Carolina. As such, BellSouth under its proposed
 6 guidelines could file any tariff it wanted and take its chances in the
 7 complaint process because it would not matter to BellSouth if it loses
 8 the complaint. This is because the damage to the potential competitor
 9 will already have been done and BellSouth can eventually make up any
 10 loss caused by the complaint from BellSouth's captive ratepayers. So,
 11 even if BellSouth loses the complaint, it would achieve its ultimate
 12 goal of protecting its monopoly.

13 Notwithstanding the presumptive validity of rates indicated by
 14 tariffs to be filed under this section, the Commission has authority to
 15 stay the effective dates of such tariff and that authority should be
 16 explicitly recognized in the guidelines.

17

18 Q. BELL SOUTH PROPOSES THAT ANY "RATIONAL" BASIS FOR
 19 DISCRIMINATING AGAINST A CUSTOMER – WHETHER A
 20 CONSUMER OR A CARRIER – IMMUNIZES ITS BEHAVIOR. IS THIS
 21 STANDARD REASONABLE?

22 A. No. In proposing this standard, BellSouth ignores its status as a

monopoly provider of local exchange service and assumes that the market is functionally competitive. The local market is not functionally competitive. BellSouth also ignores existing law, which uses a standard that is designed to deal with BellSouth's status. BellSouth also assumes that discrimination must occur as between its customers, rather than against a group of customers as a whole – such as against competing carriers as a whole.

Last, the procedure preordains the dismissal of a complaint. If adopted, BellSouth's standard would effectively deprive other carriers of a meaningful opportunity to challenge BellSouth's rates and practices, would thus preclude "appropriate regulation" of BellSouth. This is not consistent with constitutional or statutory intent, and would allow BellSouth to set rates in its virtually unbridled discretion.

Q: WHAT IS WRONG WITH USING A "RATIONAL BASIS" TEST FOR DETERMINING WHETHER A COMPLAINT SHOULD BE ACCEPTED?

A: This standard may be appropriate in a functionally competitive market, but those preconditions for BellSouth's standard do not exist here. Given the South Carolina Supreme Court's ruling, discussed above, there has been no finding by the Commission that South Carolina's local exchange market is competitive. Thus the guidelines proposed by BST assume a level of competition in local exchange service that

1 does not exist.

2 A “rational basis” standard is different from the “just,
3 reasonable and nondiscriminatory” standard, adopted by the federal
4 Telecommunications Act, which, in part, is an absolute standard used
5 to judge behavior by the Regional Bell Operating Companies in regard
6 to entry into what have been non-competitive markets. For example,
7 it may be “rational” for a company to discriminate against a particular
8 competitor in a fully competitive market, but such discrimination, in
9 the context of a monopoly market may not be considered “just,
10 reasonable and nondiscriminatory” (emphasis added). What is “just”
11 takes into account the context in which BellSouth has been the
12 monopoly provider of local exchange service and access to
13 interconnection and network elements.

14

15 Q: WHY DO YOU SAY THAT THE COMPLAINT PROCEDURE PROPOSED
16 BY BELL SOUTH PREORDAINS THE RESULT?

17 A: With respect to allegations of discrimination, the “complaint . . . must
18 establish . . . that there is no underlying rationale for the discrimination
19 which has occurred...” (Emphasis added). Therefore, before
20 discovery even can be commenced and before answers to discovery
21 can be obtained, there would be a “threshold determination” whether
22 the complaint – which must be accompanied by verified testimony

1 establishing the allegations - is well-founded. Many of the "facts"
 2 could be exclusively within BellSouth's possession, while any alleged
 3 rationale expressed by BellSouth for the discrimination would suffice
 4 to result in dismissal of the complaint.

5 With respect to allegations of abuse of market position, the
 6 complaining party "must establish [in the complaint] that BellSouth
 7 has market power in a relevant market, that BellSouth prices its
 8 services . . . in a way that harms competition in a relevant market,
 9 and that competition in that market has been harmed" (Emphasis
 10 added). Again, all of these matters would have to be "establish[ed]"
 11 by the complaint - with verified testimony, no less - before the
 12 "threshold determination" is made.

13 "Only those complaints which pass this threshold test should be
 14 investigated further and set down for a hearing so that the complaining
 15 party has the opportunity to prove the facts alleged. Broad
 16 generalizations are not sufficient to meet the requirements of a
 17 complaint" (Emphasis added). Only in the event the threshold is
 18 realized would BellSouth have to file any verified document to support
 19 its allegations in its Answer, notwithstanding that the Answer would be
 20 used to dismiss the Complaint for failure to "establish" the claim. If
 21 the Complaint should for some reason survive the threshold
 22 determination, the hearing may be set within fourteen (14) days - with
 23 or, more likely, without discovery.

1

2 Q. ARTICLE IV OF BELL SOUTH'S PROPOSED COMPLAINT GUIDELINES
3 STATE THAT THE ENTIRE COMPLAINT PROCESS, FROM FILING DATE
4 TO WRITTEN ORDER, SHALL BE COMPLETED IN 120 DAYS. IS THIS
5 REASONABLE?

6 A. No, especially given the antitrust standards for filing a complaint that
7 are proposed by BellSouth's guidelines.

8

9 Q. IN ARTICLE IV, PARAGRAPH 5(I)(b), BELL SOUTH ONCE AGAIN
10 ATTEMPTS TO DEFINE ABUSE OF MARKET POSITION AS
11 ESTABLISHING ABUSE OF MARKET POWER. IS THIS REASONABLE?

12 A. No. As I stated earlier in this testimony, the term in the statute is
13 "abuse of market position" and this term is very different than abuse of
14 market power which BellSouth wants as the criteria.

15

16 Q. SHOULD BELL SOUTH'S PROPOSED COMPLAINT PROCESS
17 GUIDELINES BE MODIFIED OR SCRAPPED?

18 A. BellSouth's proposed complaint guidelines should be scrapped.
19 BellSouth's proposed complaint process guidelines are basically 12
20 pages of self-serving and unnecessary requirements that work to limit
21 the Commission's regulatory authority and make it difficult, if not
22 impossible, for any complaint filed against BellSouth to be upheld. In
23 contrast, United Telephone's complaint process guidelines only take up
24 1 ½ pages and permit the Commission to exercise its judgment to

1 decide whether or not a complaint has merit. United's guidelines can
2 be this short because they do not attempt to limit the Commission's
3 authority or define terms contained in the statute (or terms not
4 contained in the statute).

5

6 Q. SHOULD THE COMMISSION MODIFY UNITED'S COMPLAINT
7 PROCESS GUIDELINES AND IMPOSE THEM ON BELL SOUTH?

8 A. Yes. Attachment 1 contains United's Complaint Process Guidelines as
9 modified so that they can be applied to BellSouth.

10

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

12 A. Yes.

Attachment 1

PRICE REGULATION PLAN

FOR

BELLSOUTH TELECOMMUNICATIONS, INC.

1. BellSouth's Price Regulation Plan

BellSouth Telecommunications, Inc. (hereinafter referred to as the "Company" or "BellSouth") elected, effective August 13, 1999, to have the rates, terms and conditions for its services regulated under the price regulation plan set forth in S.C. Code §58-9-576(B). The referenced Code section (attached as Exhibit 1) provides for alternative forms of regulation, or price regulation, rather than rate of return or other forms of earnings regulation.

As a result of this election, the Company acknowledges it is governed by the plan set forth in the above statute.

2. Applicability of Plan

The Price Regulation Plan, as adopted by BellSouth, will apply to all South Carolina Public Service Commission (the Commission) regulated services that are offered by the Company.

3. Filing and Review of Tariffs

The Company shall file tariffs that set out the rates, terms and conditions for its services. The tariffs shall be presumed valid and become effective seven days after filing for price decreases and fourteen days after filing for price increases and new services.

The Commission may, on its own motion or in response to a petition from any interested party, investigate whether a proposed tariff is in the public interest. Such an investigation must be initiated within thirty (30) days after the tariff is filed. Within ninety (90) days of the initiation of the investigation, unless further suspended by the Commission, the Commission shall issue a final order either approving or modifying the proposed tariff. Absent final Commission action within ninety (90) days, unless further suspended by the Commission, the proposed changes shall be deemed approved. Proposed tariffs will be effective as specified in the tariff and may remain in effect during the investigation. However, following Commission action within the foregoing time periods, the Company agrees that any necessary rate adjustment shall be made retroactive to the effective date of the tariff.

4. Reporting

Reports will be issued in accordance with the Rules and Regulations Governing Service Supplied by Telecommunications Companies in South Carolina. Reports shall be filed on a quarterly basis to include Service Reports for Customer Trouble Reports per 100 Access Lines, Customer Out of Service Trouble Clearing times, and Held Application/Availability of Service, by exchange, by month. An Annual report will be filed including the financial and access line information being furnished by BellSouth on the date it elected to have its services regulated under the referenced price regulation plan.

(4) will reduce regulatory delay and costs;

(5) provides adequate safeguards to consumers of telecommunications services, including other telecommunications companies, when such services are not readily available from alternative suppliers in the relevant geographic market;

(6) includes effective safeguards to assure that rates for noncompetitive services do not subsidize the prices charged for competitive services. In determining whether a service is competitive, the commission shall consider, at a minimum, the availability, market share, and price of comparable service alternatives;

(7) assures that rates for noncompetitive services are just, reasonable, or not unduly discriminatory and provide a contribution to basic local telephone service; and

(8) does not jeopardize the ability of the telephone utility to provide quality, affordable telecommunications service.

(C) The commission may, on its own motion or the motion of any interested party, review any decision adopting an alternative method of regulation for a local exchange telephone utility. After notice and opportunity to be heard and upon a showing by substantial evidence, the commission may impose regulatory standards consistent with the provisions of this chapter.

HISTORY: 1994 Act No. 347, § 1, eff April 20, 1994.

§ 58-9-576. Election by LEC (local exchange carrier); alternative forms of regulation; duties of LEC.

(A) Any LEC may elect to have rates, terms, and conditions determined pursuant to the plan described in subsection (B), provided the commission has approved a local interconnection agreement in which the LEC is a participant with an entity determined by the commission not to be affiliated with the LEC or the commission determines that another provider's service competes with the LEC's basic local exchange telephone service.

(B) Notwithstanding any other provision of this chapter, effective July 1, 1996, any LEC may elect to have its rates, terms, and conditions for its services determined pursuant to the plan described in this subsection, in lieu of other forms of regulation including, but not limited to, rate of return or rate base monitoring or regulation, upon the filing of notice with the commission as follows:

(1) If the provisions of (A) have been met, the plan under this subsection becomes effective on the date specified by the electing LEC but in no event sooner than thirty days after such notice is filed with the commission.

(2) On the date a LEC notifies the commission of its intent to elect the plan described in this section, existing rates, terms, and conditions for the services provided by the electing LEC contained in the then-existing tariffs and contracts are considered just and reasonable.

(3) The rates for flat-rated local exchange services for residential and single-line business customers on the date of election shall be the maximum rates that such LEC may charge for these local exchange services for a period of two years from the date the election is filed with the commission. During such period, the local exchange company may charge less than the authorized maximum rates for these services. For those small LEC's whose prices are below the statewide

average local service rate, weighted by number of access lines, the commission shall waive the requirements of this paragraph.

(4) For those companies to which item (3) applies, after the expiration of the period set forth above, the rates for flat-rate local exchange residential and single-line business service provided by a LEC may be adjusted on an annual basis pursuant to an inflation-based index.

(5) The LEC's shall set rates for all other services on a basis that does not unreasonably discriminate between similarly situated customers; provided, however, that all such rates are subject to a complaint process for abuse of market position in accordance with guidelines to be adopted by the commission.

(6) A LEC subject to this section shall file tariffs for its local exchange services that set out the terms and conditions of the services and the rates for such services. The tariff shall be presumed valid and become effective seven days after filing for price decreases and fourteen days after filing for price increases and new services.

(7) Any incumbent LEC operating under an alternative regulatory plan approved by the commission before the effective date of this section must adhere to such plan until such plan expires or is terminated by the commission, whichever is sooner.

HISTORY: 1996 Act No. 354, § 3, eff May 29, 1996.

§ 58-9-577. Approval of alternative form of regulation; conditions and effect of approval.

Notwithstanding Sections 58-9-575 and 58-9-576, any small LEC may elect to have the rates, terms, and conditions of its services determined pursuant to alternative forms of regulation, which may differ among companies and may include, but not be limited to, price regulation, rather than rate of return or other forms of earning regulation. Upon application, the commission shall approve such alternative regulation or price regulation, which may differ among local exchange companies, upon finding that the plan as proposed:

- (1) protects the affordability of basic local exchange telephone service, as such service is defined by the commission;
- (2) reasonably assures the continuation of basic local exchange telephone service that meets reasonable service standards that the commission may adopt;
- (3) will not unreasonably prejudice any class of telephone customers, including telecommunications companies;
- (4) is not inconsistent with the federal Telecommunications Act of 1996; and
- (5) is otherwise consistent with the public interest.

Upon approval of a price regulation plan, price regulation shall be the sole form of regulation imposed upon the electing local exchange carrier, and the commission shall regulate the electing local exchange carrier's prices rather than its earnings. The small LEC shall file a tariff for its local exchange services that sets out the terms and conditions of the services and the rates for these services. The tariff shall be presumed valid and shall become effective seven days after filing for price decreases and fourteen days after filing for price increases and new services, subject to a complaint process in accordance with guidelines to be adopted by the commission. The commission shall issue an order denying or approving the proposed plan for

Attachment 2

GREGORY J. DARNELL
PROFESSIONAL EXPERIENCE

6/21/96 – Date *REGIONAL SENIOR MANAGER, MCI, LAW & PUBLIC POLICY.*

Responsibilities: Define MCI's public policy and ensure effective advocacy throughout BellSouth Region.

9/1/95 - 6/21/96 *SENIOR STAFF SPECIALIST III, MCI, NATIONAL ACCESS POLICY.*

Responsibilities: Define MCI's national access policies and educate field personnel. Present MCI's access policy positions to Executive Management and obtain concordance.

9/1/94 - 9/1/95 *SENIOR STAFF SPECIALIST III, MCI, CARRIER RELATIONS.*

Responsibilities: Manage MCI's business relationship with ALLTEL.

1/1/93 - 9/1/94 *SENIOR STAFF SPECIALIST II, MCI, SOUTHERN CARRIER MANAGEMENT.*

Responsibilities: Chief of Staff.

9/1/91 - 1/1/93 *MANAGER, MCI, ECONOMIC ANALYSIS.*

Responsibilities: Testify before state utility commissions on access issues. Write tariff and rulemaking pleadings before the FCC. Serve as MCI's expert on Local Exchange Carrier revenue requirements, demand forecasts and access rate structures.

1/1/90 - 9/1/91 *SENIOR STAFF SPECIALIST I, MCI, FEDERAL REGULATORY.*

Responsibilities: Direct analysis to support MCI's positions in FCC tariff and rulemaking proceedings. Provide access cost input to MCI's Business Plan. Write and file petitions against annual tariff filings and requests for rulemaking. Train State Utility Commissions on the use and design of financial databases.

1/1/89 - 1/1/90 *STAFF SPECIALIST III, MCI, FEDERAL REGULATORY.*

Responsibilities: Track and monitor tariff transmittals for Ameritech, BellSouth, SWBT and U S West. Author petitions opposing RBOC tariff filings. Represent MCI at National Ordering and Billing Forum.

10/9/87 - 1/1/89 *SUPERVISOR, MCI, TELCO COST ANALYSIS.*

Responsibilities: Supervise team of analysts in their review of interstate access tariff changes. Coordinate updates to Special Access billing system.

Attachment 5 (CONT)

1/1/86 - 10/9/87 FINANCIAL ANALYST III, MCI, TELCO COST.

Responsibilities: Analyze MCI's access costs and produce forecasts.

6/1/85 - 1/1/86 STAFF ADMINISTRATOR II, MCI, LITIGATION SUPPORT.

Responsibilities: Support MCI's antitrust counsel in taking depositions, preparing interrogatories and document requests.

1/1/84 - 6/1/85 PRODUCTION ANALYST, MCI, LITIGATION SUPPORT.

Responsibilities: Review and abstract MCI and AT&T documents obtained in MCI's antitrust litigation.

8/1/82 - 1/1/84 LEGAL ASSISTANT, GARDNER, CARTON AND DOUGLAS.

Responsibilities: Research and obtain information from the FCC, FERC and SEC.

EDUCATIONAL EXPERIENCE

*9/1/91 - 1/1/93 GEORGE WASHINGTON UNIVERSITY, GRADUATE SCHOOL OF
TELECOMMUNICATIONS.*

Studies: Advanced courses in Public Policy, Electrical Engineering and Economics.

9/1/78 - 6/1/82 UNIVERSITY OF MARYLAND, B.A., ECONOMICS.

Studies: Macro and Micro Economics, Statistics, Calculus, Astronomy and Music.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

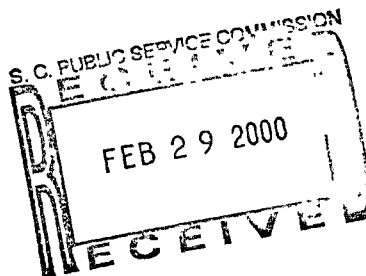
The undersigned, Anissa Agha, hereby certifies that she is employed by Woodward, Còthran & Herndon and that she has caused the Direct Testimony of Greg Darnell to be served by placing such in the care and custody of the United States Postal Service with first-class postage affixed thereto and addressed to the following this March 1, 2000:

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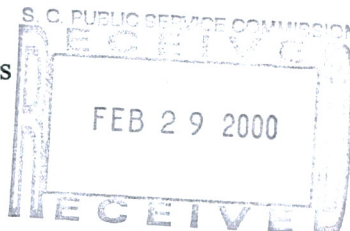
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Anissa Agha
 Anissa Agha

SWORN to before me this

1st day of March, 2000.

Darra Othman (L.S.)
 Notary Public for South Carolina

My Commission Expires: 9/15/2003